

REFERENCE TITLE: **delinquent information tax returns; penalty**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# **HB 2107**

Introduced by  
Representatives Yarbrough, Farley, Murphy

AN ACT

AMENDING SECTION 42-1125, ARIZONA REVISED STATUTES; RELATING TO INFORMATION TAX RETURNS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 42-1125, Arizona Revised Statutes, is amended to  
3 read:

4                  42-1125. Civil penalties: definition

5       A. If a taxpayer fails to make and file a return for a tax  
6 administered pursuant to this article on or before the due date of the return  
7 or the due date as extended by the department, then, unless it is shown that  
8 the failure is due to reasonable cause and not due to wilful neglect, four  
9 and one-half per cent of the tax required to be shown on such return shall be  
10 added to the tax for each month or fraction of a month elapsing between the  
11 due date of the return and the date on which it is filed. The total penalty  
12 shall not exceed twenty-five per cent of the tax found to be remaining due.  
13 The penalty so added to the tax is due and payable on notice and demand from  
14 the department. For the purpose of computing the penalty imposed under this  
15 subsection, the amount required to be shown as tax on a return shall be  
16 reduced by the amount of any part of the tax which is paid on or before the  
17 beginning of such month and by the amount of any credit against the tax which  
18 may be claimed on the return. If the amount required to be shown as tax on a  
19 return is less than the amount shown as tax on such return the penalty  
20 described in this subsection shall be applied by substituting such lower  
21 amount.

22       B. If a taxpayer fails or refuses to file a return on notice and  
23 demand by the department, the taxpayer shall pay a penalty of twenty-five per  
24 cent of the tax, which is due and payable on notice and demand by the  
25 department, in addition to any penalty prescribed by subsection A of this  
26 section, unless it is shown that the failure is due to reasonable cause and  
27 not due to wilful neglect. This penalty is payable on notice and demand from  
28 the department.

29       C. If a taxpayer fails or refuses to furnish any information requested  
30 in writing by the department, the department may add a penalty of twenty-five  
31 per cent of the amount of any deficiency tax assessed by the department  
32 concerning the assessment of which the information was required, unless it is  
33 shown that the failure is due to reasonable cause and not due to wilful  
34 neglect.

35       D. If a person fails to pay the amount shown as tax on any return  
36 within the time prescribed, a penalty of one-half of one per cent, not to  
37 exceed a total of ten per cent, shall be added to the amount shown as tax for  
38 each month or fraction of a month during which the failure continues, unless  
39 it is shown that the failure is due to reasonable cause and not due to wilful  
40 neglect. If the department determines that the person's failure to pay was  
41 due to reasonable cause and not due to wilful neglect and that a payment  
42 agreement pursuant to section 42-2057 is appropriate, the department shall  
43 not impose the penalty unless the taxpayer fails to comply with the payment  
44 agreement. If the taxpayer is also subject to a penalty under subsection A  
45 of this section for the same tax period, the total penalties under subsection

1 A of this section and this subsection shall not exceed twenty-five per cent.  
2 For the purpose of computing the penalty imposed under this subsection:

3     1. The amount shown as tax on a return shall be reduced by the amount  
4 of any part of the tax that is paid on or before the beginning of that month  
5 and by the amount of any credit against the tax that may be claimed on the  
6 return.

7     2. If the amount shown as tax on a return is greater than the amount  
8 required to be shown as tax on that return, the penalty shall be applied by  
9 substituting the lower amount.

10    E. If a person fails to pay any amount required to be shown on any  
11 return that is not so shown within twenty-one calendar days after the date of  
12 notice and demand, a penalty of one-half of one per cent, not to exceed a  
13 total of ten per cent, shall be added to the amount of tax for each month or  
14 fraction of a month during which the failure continues, unless it is shown  
15 that the failure is due to reasonable cause and not due to wilful neglect.  
16 If the taxpayer is also subject to penalty under subsection A of this section  
17 for the same tax period, the total penalties under subsection A of this  
18 section and this subsection shall not exceed twenty-five per cent. For the  
19 purpose of computing the penalty imposed under this subsection, any amount  
20 required to be shown on any return shall be reduced by the amount of any part  
21 of the tax that is paid on or before the beginning of that month and by the  
22 amount of any credit against the tax that may be claimed on the return.

23    F. In the case of a deficiency, for which a determination is made of  
24 an additional amount due, which is due to negligence but without intent to  
25 defraud, the person shall pay a penalty of ten per cent of the amount of the  
26 deficiency.

27    G. If part of a deficiency is due to fraud with intent to evade tax,  
28 fifty per cent of the total amount of the tax, in addition to the deficiency,  
29 interest and other penalties provided in this section, shall be assessed,  
30 collected and paid as if it were a deficiency.

31    H. If the amount, whether determined by the department or the  
32 taxpayer, required to be withheld by the employer pursuant to title 43,  
33 chapter 4 is not paid to the department on or before the date prescribed for  
34 its remittance, the department may add a penalty of twenty-five per cent of  
35 the amount required to be withheld and paid, unless it is shown that the  
36 failure is due to reasonable cause and not due to wilful neglect.

37    I. A person who, with or without intent to evade any requirement of  
38 this article or any lawful administrative rule of the department of revenue  
39 under this article, fails to file a return or to supply information required  
40 under this article or who, with or without such intent, makes, prepares,  
41 renders, signs or verifies a false or fraudulent return or statement or  
42 supplies false or fraudulent information shall pay a penalty of not more than  
43 one thousand dollars. This penalty shall be recovered by the department of  
44 law in the name of this state by an action in any court of competent  
45 jurisdiction.

1       J. If the taxpayer files what purports to be a return of any tax  
2 administered pursuant to this article but which is frivolous or which is made  
3 with the intent to delay or impede the administration of the tax laws, that  
4 person shall pay a penalty of five hundred dollars.

5       K. If a taxpayer who is required to file or provide an information  
6 return under this title or title 43 fails to file the return at the  
7 prescribed time or files a return which fails to show the information  
8 required, that taxpayer shall pay a penalty of ~~five~~ ONE hundred dollars **FOR**  
**EACH MONTH OR FRACTION OF A MONTH DURING WHICH THE FAILURE CONTINUES** unless  
9 it is shown that the failure is due to reasonable cause and not due to wilful  
10 neglect. **THE TOTAL PENALTIES UNDER THIS SUBSECTION SHALL NOT EXCEED FIVE**  
11 **HUNDRED DOLLARS.**

12     L. If it appears to the superior court that proceedings before it have  
13 been instituted or maintained by a taxpayer primarily for delay or that the  
14 taxpayer's position is frivolous or groundless, the court may award damages  
15 in an amount not to exceed one thousand dollars to this state. Damages so  
16 awarded shall be collected as a part of the tax.

17     M. A person who is required under section 43-413 to furnish a  
18 statement to an employee and who wilfully furnishes a false or fraudulent  
19 statement, or who wilfully fails to furnish a statement required by section  
20 43-413, is for each such failure subject to a penalty of fifty dollars.

21     N. A person who is required to collect or truthfully account for and  
22 pay a tax administered pursuant to this article, including any luxury  
23 privilege tax, and who wilfully fails to collect the tax or truthfully  
24 account for and pay the tax, or wilfully attempts in any manner to evade or  
25 defeat the tax or its payment, is, in addition to other penalties provided by  
26 law, liable for a penalty equal to the total amount of the tax evaded, not  
27 collected or not accounted for and paid. Except as provided in subsections  
28 S, T and U of this section, no other penalty under this section relating to  
29 failure to pay tax may be imposed for any offense to which this subsection  
30 applies.

31     O. Unless due to reasonable cause and not to wilful neglect:  
32        1. A person who fails to provide ~~his~~ **THAT PERSON'S** taxpayer  
33 identification number in any return, statement or other document as required  
34 by section 42-1105, subsection A shall pay a penalty of five dollars for each  
35 such failure.

36        2. A person, when filing any return, statement or other document for  
37 compensation on behalf of a taxpayer, who fails to include that person's own  
38 taxpayer identification number and the taxpayer's identification number shall  
39 pay a penalty of fifty dollars for each such failure.

40        3. A person, when filing any return, statement or other document  
41 without compensation on behalf of a taxpayer, who fails to include that  
42 person's own taxpayer identification number and the taxpayer's identification  
43 number is not subject to a penalty.

1 No other penalty under this section may be imposed if the only violation is  
2 failure to provide taxpayer identification numbers.

3 P. If a taxpayer fails to pay the full amount of estimated tax  
4 required by title 43, chapter 5, article 6, a penalty is assessed equal to  
5 the amount of interest that would otherwise accrue under section 42-1123 on  
6 the amount not paid for the period of nonpayment, not exceeding ten per cent  
7 of the amount not paid. The penalty prescribed by this subsection is in lieu  
8 of any other penalty otherwise prescribed by this section and in lieu of  
9 interest prescribed by section 42-1123.

10 Q. The department of law, with the consent of the department of  
11 revenue, may compromise any penalty for which it may bring an action under  
12 this section.

13 R. Penalties shall not be assessed under subsection D of this section  
14 on additional amounts of tax paid by a taxpayer at the time the taxpayer  
15 voluntarily files an amended return. This subsection does not apply if:

16 1. The taxpayer is under audit by the department.

17 2. The amended return was filed on demand or request by the  
18 department.

19 3. The total additional tax paid and due for the tax period represents  
20 a substantial understatement of tax liability. For the purposes of this  
21 paragraph, there is a substantial understatement of tax for any tax period if  
22 the amount of the understatement for the tax period exceeds the greater of  
23 ten per cent of the actual tax liability for the tax period or two thousand  
24 dollars.

25 S. In addition to other penalties provided by law, a person who  
26 knowingly and intentionally does not comply with any requirement under  
27 chapter 3, article 5 of this title relating to cigarettes shall pay a penalty  
28 of one thousand dollars. A person who knowingly and intentionally does not  
29 pay any luxury tax that relates to cigarettes imposed by chapter 3 of this  
30 title shall pay a penalty that is equal to ten per cent of the amount of the  
31 unpaid tax.

32 T. A cigarette manufacturer, cigarette importer or cigarette  
33 distributor, as defined in section 42-3001, who knowingly and intentionally  
34 sells or possesses cigarettes with false manufacturing labels or cigarettes  
35 with counterfeit tax stamps, or who obtains cigarettes through the use of a  
36 counterfeit license, shall pay the following penalties:

37 1. For a first violation involving two thousand or more cigarettes,  
38 one thousand dollars.

39 2. For a subsequent violation involving two thousand or more  
40 cigarettes, five thousand dollars.

41 U. The civil penalties in this section are in addition to any civil  
42 penalty under chapter 3, article 5 of this title.

43 V. For the purposes of this section, and only as applied to the taxes  
44 imposed by chapter 5, articles 1 through 6 and chapter 6, articles 1, 2 and 3  
45 of this title, "reasonable cause" means a reasonable basis for the taxpayer

1 to believe that the tax did not apply to the business activity or the  
2 storage, use or consumption of the taxpayer's tangible personal property in  
3 this state.

4           Sec. 2. Effective date

5           This act is effective, and applies to information returns that are  
6 required to be filed, from and after December 31, 2008.